PHYLLIS INEZ MASTON BARTLETT
DANIEL WALKER TAYLOR

IBLA 82-761, 82-765 Decided February 9, 1983

Appeals from decisions of Nevada State Office, Bureau of Land Management, rejecting Indian allotment applications. N-26765 and N-35396.
Affirmed.

1. Applications and Entries: Generally -- Indian Allotments on Public Domain: Generally

An application for an Indian allotment filed pursuant to sec. 4 of the General Allotment Act, as amended, 25 U.S.C. §§ 334, 336 (1976), for land which has not been classified for such disposition, and which is not accompanied by either the certificate of eligibility required by 43 CFR 2531.1(b) or the petition for classification required by 43 CFR 2531.2 is properly rejected.

APPEARANCES: Phyllis Inez Maston Bartlett and Daniel Walker Taylor, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

These appeals are taken from decisions of the Nevada State Office, Bureau of Land Management (BLM), rejecting applications N-26765 and N-35396, filed for Indian allotments on public lands in Clark County, Nevada, 1/ pursuant to section 4 of the General Allotment Act of February 8, 1887, as amended, 25 U.S.C. §§ 334, 336 (1976). Because of the similarity of the issues, the Board has consolidated the appeals for consideration.

1/ Allotment application N-26765, filed by Phyllis Bartlett, covered the NE 1/4, sec. 10, T. 23 S., R. 60 E., Mount Diablo meridian. Allotment application N-35396, filed by Daniel Taylor, covered the SW 1/4, sec. 28, T. 25 S., R. 63 E., Mount Diablo meridian.

The applications were filed with BLM in 1979 and 1982. In response to the question whether the land was occupied by the applicant and whether there were improvements on the land both applicants responded "no." In response to the question, "Do you or your minor child claim a valid bona fide settlement," applicant Bartlett checked "no" and applicant Taylor checked "yes." Each application referred to a posted notice, a copy of which was attached to the application. The notices showed that they had been recorded in Clark County.

Applicant Bartlett was notified by BLM that the land embraced in her application (N-26765) was not subject to entry for Indian allotment until classified as suitable for such purpose and, further, that a certificate of eligibility for an allotment was required before an allotment application could be processed. After allowing applicant time to provide the required documents, BLM rejected her application. The allotment application of appellant Taylor was rejected by BLM because the land was segregated from all forms of entry under the public land laws of the United States by the Act of March 6, 1958, P.L. 85-339, 72 Stat. 31, as amended by, Act of October 10, 1962, P.L. 87-784, 76 Stat. 804. The record does not disclose that any certificate of eligibility was provided by Taylor.

The essential contention raised in the statements of reasons for appeal is that the statutory basis for the rejection of the allotment applications constitutes an unconstitutional abridgement of the right to an allotment. This argument is not persuasive. Congress has the power to dispose of and make all needful rules and regulations respecting the territory belonging to the United States. U.S. Const. art. IV, § 3, cl.2.

[1] Public lands in Nevada (as well as other western states) were "withdrawn from settlement, location, sale or entry, and reserved for classification, and pending determination of the most useful purpose to which such land may be put in consideration of the provisions of [the] act of June 28, 1934" by Exec. Order No. 6910 of November 26, 1934. See 43 U.S.C. § 315f (1976). Such land is not subject to settlement under section 4 of the General Allotment Act until such settlement has been authorized by classification. 43 CFR 2530.0-3(c). Only one of the appellants claims a "settlement," however, there is nothing in the record to indicate that he physically settled upon the lands prior to their withdrawal under Exec. Order No. 6910. It is well recognized that no rights of Indians are violated by withdrawal of the public lands from settlement and the requirement that such lands be classified pursuant to section 7 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315f (1976), before the public lands can be allotted to an Indian under section 4 of the General Allotment Act. Samuel Lee Gifford, 53 IBLA 23, 27 (1981), and cases cited therein.

Further, it appears from the copy of the master title plat in the file that the township in which the land in the Bartlett application is located has been affected by a classification (N-1575) of the land as suitable for retention in Federal ownership for multiple use management pursuant to the Classification and Multiple Use Act of 1964. 43 U.S.C.A. §§ 1411-1418 (West Supp. 1982) (statute superseded). The notice of such classification published in the Federal Register expressly segregated the land from appropriation under the agricultural land laws including 25 U.S.C. § 334, 34 FR 14084 (Sept. 5, 1969).

The right to an Indian allotment is limited by statute to land "not otherwise appropriated." 25 U.S.C. §§ 334, 336 (1976). Accordingly, where an application is filed for land not classified as suitable for Indian allotment and is not accompanied by a petition for classification of the land, the application is properly rejected. Mary Frances Stiles, 64 IBLA 361 (1982).

Further, neither of the allotment applicants filed a certificate of eligibility for allotment as required by 43 CFR 2531.1(b). The failure of applicants to provide the certificate of eligibility requires rejection of the applications. Litha Muriel Bryant Smith, 66 IBLA 150 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge